



1-1-1991

Public Entities, Officers, and Employees

University of the Pacific; McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>



Part of the [Legislation Commons](#)

Recommended Citation

University of the Pacific; McGeorge School of Law, *Public Entities, Officers, and Employees*, 22 PAC. L. J. 696 (1991).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol22/iss2/29>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Public Entities, Officers, and Employees

Public Entities, Officers, and Employees; annual leave

Government Code § 19849.16 (new); § 19849.13 (amended).
AB 2971 (Statham); 1990 STAT. Ch. 284
SB 2628 (Russell); 1990 STAT. Ch. 801
Sponsor: Department of Personnel Administration

Under existing law, specified state employees¹ may elect to participate in an annual leave program.² Chapter 284 authorizes the Department of Personnel Administration (Department)³ to provide annual leave benefits for nonrepresented state employees.⁴

Existing law allows the Department to compute the lump-sum payment that is due to an employee separated from service based on whether the separation is the employee's fault.⁵ Chapter 801 permits the Department to compute the benefits that are due to nonelected state board and commission members in the same manner.⁶ Under Chapter 801, salaries of nonelected state board and

1. See CAL. GOV'T CODE § 19858.3 (West Supp. 1990) (list of specified employees includes managerial employees, nonelected officers of the executive branch eligible to receive managerial benefits, state traffic sergeants in the California Highway Patrol, and employees in a state bargaining unit under a memorandum of understanding that has been agreed to by the state employer and approved by the legislature). See *id.* §§ 3513(e) (West 1980) (definition of managerial employee); 3517.5 (provisions for written memorandum of agreement); 18801.1 (West Supp. 1990) (designating employees as managerial).

2. *Id.* §§ 19858.4-19858.6 (West Supp. 1990). See 2 CAL. CODE REGS. § 599.752 (1990) (regulations regarding participation in annual leave program).

3. See CAL. GOV'T CODE §§ 19815(a) (West Supp. 1990) (definition of Department of Personnel Administration); 19816 (duties, purposes, responsibilities, and jurisdiction of the Department).

4. *Id.* § 19849.13 (amended by Chapter 284). See 2 CAL. CODE REGS. § 599.619 (1990) (definition of nonrepresented employee).

5. CAL. GOV'T CODE § 19839(b) (West Supp. 1990). The lump-sum payment may include unused vacation or annual leave, or compensation for overtime work. *Id.* § 19839(a). But see *id.* § 18000 (lump-sum computing does not apply to fixed-salaried state officers).

6. *Id.* § 19849.16 (enacted by Chapter 801). Chapter 801 applies to state board and commission members that have salaries fixed by law. *Id.* See *id.* §§ 11009 (West Supp. 1990) (board and commission members receive no compensation unless provided for by law); 11550-11564 (salaries of specified positions).

commission members may be reduced if the absences of the member exceed paid leave.⁷

RWL

Public Entities, Officers, and Employees; building standards--fire safety

Health and Safety Code § 17920.7 (repealed); §§ 13143.2, 13143.5, 13869.7 (new); §§ 13146, 17958.5 (amended).
AB 2666 (Hansen); 1990 STAT. Ch. 1176

Existing law requires the state fire marshal¹ to adopt fire safety regulations and to enforce building standards relating to structural fire safety in multiple story structures used for human habitation.² Existing law additionally permits local governments and fire protection districts³ to adopt alternative fire safety building standards that are substantially equivalent to the California Building Standards Code.⁴ Chapter 1176 allows any local government or fire protection district to adopt standards that are more stringent

7. *Id.* § 19849.16 (enacted by Chapter 801). The Department may not provide paid leave benefits greater than the maximum benefits provided to managerial employees. *Id.*

1. *See* CAL. HEALTH & SAFETY CODE §§ 13100-13111.2 (West 1984 & Supp. 1990) (duties and responsibilities of the state fire marshal).

2. *Id.* § 13143.2 (enacted by Chapter 1176). Chapter 1176 amends and recodifies California Health and Safety Code section 17920.7 as section 13143.2. *See id.* Chapter 1176 codifies legislative intent that the California Building Standards Code be consistent with the Uniform Building Code. *Id.* § 13143.2(b) (enacted by Chapter 1176). *See also id.* §§ 18935-18944.7 (West Supp. 1990) (California Building Standards Code).

3. *See id.* §§ 13825-13829 (formation of fire protection districts).

4. *Id.* § 13143.2(b) (enacted by Chapter 1176); §§ 17922, 17958.5, 17958.7 (West Supp. 1990). An entity must meet specified requirements before the entity may adopt alternative fire safety building standards. *Id.* § 13143.2(b) (enacted by Chapter 1176). *See* 72 Op. Att'y Gen. 180 (1989) (cities and counties may not adopt building standards relating to fire safety that are more stringent than the fire safety building standards adopted by the state fire marshal); *Danville Fire Protection Dist. v. Duffel Fin. & Constr. Co.*, 58 Cal. App. 3d 241, 249, 129 Cal. Rptr. 882, 887 (1976) (standards imposed by a fire protection district that were more stringent than the fire safety building standards of the California Building Standards Code were invalid).

than the fire safety building standards of the California Building Standards Code.⁵ Chapter 1176 requires that any standards adopted must be reasonably necessary due to local climatic, geological, or topographical conditions.⁶

Existing law specifies the responsibilities for the enforcement of the building standards.⁷ Under Chapter 1176, the same agency or entity that is responsible for enforcement of other building standards not related to fire and panic safety and has jurisdiction in the area affected by the building standards must enforce the standards adopted pursuant to these provisions.⁸

GWA

Public Entities, Officers and Employees; counties-- real property leases

Government Code § 25350.51 (amended).
AB 2897 (Hunter); 1990 STAT. Ch. 254

Existing law permits a county board of supervisors to delegate to other county officials the authority to lease real property for

5. CAL. HEALTH & SAFETY CODE §§ 13143.2(b), 13143.5(a) (enacted by Chapter 1176). The permissive authority granted by these sections does not apply to historic buildings or structures. *Id.* §§ 13143.2(e), 13143.5(h) (enacted by Chapter 1176). *See id.* § 18955 (West 1984) (definition of historical buildings or structures).

6. *Id.* §§ 13143.5(a), 13869.7(a) (enacted by Chapter 1176). Chapter 1176 does not apply to the fire safety requirements for public schools adopted under section 13143 of the California Health and Safety Code. *Id.* §§ 13143.5(e), 13869.7(g) (enacted by Chapter 1176). The entity must make an express finding that the ordinance is reasonably necessary, and must file a copy of the ordinance with the Department of Housing and Community Development. *Id.* Standards adopted by a fire protection district must be forwarded to the jurisdiction in which the ordinance will apply and will not become effective until modified or ratified by the jurisdiction. *Id.* § 13869.7(c) (enacted by Chapter 1176). The provisions of Chapter 1176 do not authorize or prohibit a local jurisdiction from requiring the installation or retrofitting of residential fire sprinkler systems. *Id.* § 13143.5(b)-(c) (enacted by Chapter 1176). *Cf. id.* § 17958.7 (West Supp. 1990) (similar language and requirements in the State Housing Law).

7. *Id.* § 13146 (amended by Chapter 1176).

8. *Id.* §§ 13143.5(f), 13146(a), 13869.7(h) (enacted by Chapter 1176).

county use.¹ Chapter 254 increases the permissible maximum value of the rental lease from \$1,000 to \$2,500 per month.² Under Chapter 254, the board of supervisors may also delegate the authority to amend real property leases for improvements or alterations not exceeding \$2,500 in total cost.³

LAMG

Public Entities, Officers, and Employees; criminal records

Health and Safety Code § 1522 (amended); Penal Code § 11105.4 (new); § 11105 and 11105.3 (amended).

AB 2617 (Felando); 1990 STAT. Ch. 1570

Support: California Association of Licensed Investigators

Opposition: American Civil Liberties Union

Under existing law, the Department of Justice¹ may release a limited criminal history to private enterprises for the purposes of screening prospective employees and foster parents.² Under Chapter 1570, the Department of Social Services³ or other

1. CAL. GOV'T CODE § 25350.51 (amended by Chapter 254). The board of supervisors must pass an ordinance or resolution to delegate real property leasing authority. *Id.*

2. *Id.* § 25350.51(a) (amended by Chapter 254). The term of the lease may not exceed three years. *Id.*

3. *Id.* § 25350.51(b) (amended by Chapter 254). The amendment may not extend the lease term and no more than two amendments may be made within a 12-month period. *Id.* A notice of intent to enter into a lease for real property must be posted in a public place for five working days prior to the beginning of the lease. *Id.*

1. *See* CAL. GOV'T CODE §§ 15000-15002.5 (West 1980) (composition and organization of the Department of Justice).

2. CAL. PENAL CODE § 11105.1-11105.2 (West 1982). Under existing law, public or private adoption agencies and specified entities may obtain complete criminal historical information of persons under investigation. *Id.* § 11105(a)-(h).

3. *See* CAL. WELF. & INST. CODE § 10110 (West 1980) (definition of the state Department of Social Services).

licensing agency is required to secure the criminal record⁴ of any applicant⁵ for a license or permit to manage a community health care facility.⁶ The Department of Social Services or other licensing agency must use the criminal record to determine if the applicant has ever been convicted of, or arrested for any crime other than a minor traffic violation.⁷ Chapter 1570 also requires the license applicant to submit fingerprints to the licensing agency and to sign a declaration regarding any prior criminal convictions.⁸

Under Chapter 1570, human resource agencies⁹ may request from the Department of Justice records of conviction and arrest for specified crimes of any person applying for a license, employment, or as a volunteer for a position involving supervisory or disciplinary power, where the person will be caring for children or the elderly, handicapped, or mentally impaired.¹⁰ Additionally, Chapter 1570 permits a contract or proprietary security organization¹¹ to request the same conviction and arrest information regarding prospective employees that human resource agencies and financial institutions may request.¹²

JPA

4. See CAL. PENAL CODE § 11140(a) (West 1982) (definition of criminal record).

5. See CAL. HEALTH & SAFETY CODE § 1522(b)(1)-(7) (amended by Chapter 1570) (list of persons other than applicants, and who have contact with county care clients, who are subject to a criminal record review).

6. *Id.* § 1522(d) (amended by Chapter 1570).

7. *Id.*

8. *Id.* § 1522(c) (amended by Chapter 1570). If the Department of Social Services determines that the applicant is awaiting trial for a sex offense against a minor or has been convicted of a felony, the Department must notify the licensee to act immediately to terminate the applicant's employment. *Id.* Under Chapter 1570, "conviction" means a plea or verdict of guilty or a conviction following a plea of nolo contendere. *Id.* § 1522(e) (amended by Chapter 1570).

9. See CAL. PENAL CODE § 11105.3(f) (amended by Chapter 1570) (definition of human resource agency).

10. *Id.* § 11105.3(a) (amended by Chapter 1570). The list of specified crimes include sex crimes, drug crimes, or crimes of violence. *Id.* See *id.* §§ 11105.3(g)-(i) (enacted by Chapter 1570) (definition of sex crimes, drug crimes, and crimes of violence).

11. See *id.* § 11105.4(e) (amended by Chapter 1570) (defining "contract or proprietary security organization" as an entity that provides private patrol operator services).

12. *Id.* § 11105.3(a)-(c) (enacted by Chapter 1570). See *id.* § 11105.3 (amended by Chapter 1570) (criminal history information that may be requested by a human resource agency). See also CAL. FIN. CODE § 777.5 (West Supp. 1990) (criminal history information that may be requested by a financial institutional).

Public Entities, Officers, and Employees; Department of Consumer Affairs--legal actions

Business and Professions Code § 132 (new).

AB 2984 (Floyd); 1990 STAT. Ch. 285

Existing law requires the director¹ of the Department of Consumer Affairs² (Department) to represent, advise, and pursue legal action on behalf of consumer interests.³ Chapter 285 requires all agencies within the Department to obtain the director's approval prior to becoming involved in legal proceedings against any state or federal agency.⁴ Chapter 285 permits a requesting agency to override the director's denial with a two-thirds vote of the requesting agency's board or commission members.⁵

UOR

1. See CAL. BUS. & PROF. CODE § 302 (West 1990) (duties and powers of the director of the Department of Consumer Affairs).

2. See *id.* §§ 101 (composition of the Department of Consumer Affairs); 101.6 (general duties and powers of the Department of Consumer Affairs).

3. *Id.* § 321. The director may seek relief in any forum against any person undertaking illegal actions that would harm consumers. *Id.* See *id.* § 320 (intervention allowed by the director or the attorney general to protect consumers). See also *id.* § 302(g) (definition of interests of consumers).

4. *Id.* § 132 (enacted by Chapter 285). If the director does not respond to the request within 30 days, Chapter 285 grants automatic approval of the agency's request to enter into the legal proceedings. *Id.*

5. *Id.* § 132 (enacted by Chapter 285). The overriding vote must include at least one public member of the agency. *Id.*

Public Entities, Officers, and Employees; emergency aircraft flights

Public Utilities Code § 21662.4 (new).

AB 2630 (La Follette); 1990 STAT. Ch. 270

Support: Regional Organ Procurement Agency of Southern California

Existing law allows public agencies owning and operating airports to adopt rules regulating the use of those airports.¹ Under Chapter 270, emergency aircraft flights for medical purposes² undertaken by law enforcement, fire fighting, military, or other emergency personnel are exempt from local ordinances restricting flight departures.³ Chapter 270 also allows the airport to charge the patient or the organization volunteering to aid the patient for the additional expenses of accommodating the arrival or departure.⁴

JPA

1. See CAL. PUB. UTIL. CODE §§ 21661-21669.6 (West 1965 & Supp. 1990).

2. See *id.* § 21662.4(b)(1)-(7) (enacted by Chapter 270) (definition of aircraft flights for emergency medical purposes).

3. *Id.* § 21662.4(a) (enacted by Chapter 270). Chapter 270 requires written emergency information to be submitted to the airport proprietor for all emergency air flights within 72 hours prior to, or subsequent to, the departure or arrival of the aircraft. *Id.* § 21662.4(c) (enacted by Chapter 270).

4. *Id.* § 21662.4(d) (enacted by Chapter 270).

Public Entities, Officers, and Employees; harbor loans

Harbors and Navigation Code § 76.9 (repealed); §§ 86, 87, 88 (new); §§ 63.6, 71.4, 71.8, 76.3, 76.7, 776, 777, 786 (amended). AB 3559 (Cortese); 1990 STAT. Ch. 1428
SB 1410 (Mello); 1990 STAT. Ch. 775

Chapter 1428 Support: Recreational Boaters of California

Chapter 775 Sponsor: Golden Gate Fishermen's Association

Chapter 775 Support: Sportfishing Association of California, Pacific Coast Federation of Fishermen's Association, Santa Cruz Port District, Department of Boating and Waterways

Existing law allows the Department of Boating and Waterways (Department)¹ to make loans² to private marina owners for specified construction projects.³ Under Chapter 1428, loans may also be made for the construction of oil recycling facilities and solid waste recycling receptacles.⁴

Existing law requires vessel pumpout facilities,⁵ floating restrooms,⁶ and onshore toilets to be operated in a manner that will prevent discharge of sewage into state waters.⁷ Chapter 1428 requires vessel pumpout facilities to post a notice identifying the

1. See CAL. HARB. & NAV. CODE § 32 (West Supp. 1990) (powers and duties of the Department).

2. See 14 CAL. CODE REGS. § 5101(d) (1985) (definition of loan).

3. CAL. HARB. & NAV. CODE § 76.3 (amended by Chapter 1428). Loans may be made for berthing facilities, dredging, parking, public access facilities, utilities, landscaping, and other incidental boating-related amenities. *Id.* § 76.3(a) (amended by Chapter 1428).

4. *Id.* § 76.3(a) (amended by Chapter 1428). Chapter 1428 applies to solid waste recycling receptacles used for the purpose of separating, reusing, or recycling all solid waste materials. *Id.* Chapter 1428 also requires owners receiving loans from the Department to open public restrooms within six months of the date that the project is opened for public use. *Id.* § 786(d) (amended by Chapter 1428).

5. See 23 CAL. CODE REGS. § 2816(a) (1985) (definition of pumpout facility).

6. See CAL. HARB. & NAV. CODE § 72.7 (West Supp. 1990) (grants to public agencies for floating restrooms).

7. *Id.* § 777(a) (amended by Chapter 1428). See 23 CAL. CODE REGS. §§ 2820, 2828 (1985) (pumpout facilities to be designed and constructed in a manner that prevents leakage or spillage of sewage). See also *id.* §§ 2815-2829 (standards for the removal of sewage from vessels); 2831-2835 (designation of marina terminals that must provide adequate sewage retention device pumpout facilities).

local enforcement agency where violations of sewage discharge laws may be reported.⁸

Under existing law, any contract or agreement⁹ for transfers or loans made by the Department must contain provisions requiring marina owners to continuously operate all small craft facilities.¹⁰ Chapter 775 limits the fees that may be charged for the use of launching ramps in small craft harbors.¹¹

Under Chapter 775, any city, county, or district receiving Department funding for the construction or improvement of small craft harbors¹² must allow commercial passenger fishing vessels¹³ and private recreational fishing vessels to use these facilities.¹⁴ However, small craft harbors are not liable for any damage that occurs on a vessel using these facilities.¹⁵

RWL

8. CAL. HARB. & NAV. CODE § 777(b) (amended by Chapter 1428).

9. See 14 CAL. CODE REGS. § 5105 (1985) (provisions for marina construction loan agreements).

10. CAL. HARB. & NAV. CODE § 71.8(a)(2) (amended by Chapter 775). Transfer or loan contracts must also contain provisions that require the governing body to punctually pay all installments of principal and interest owed to the state, to make repairs, renewals, and replacements to harbor facilities, and to procure insurance on harbor facilities. *Id.* § 71.8(a)(1) (amended by Chapter 775).

11. *Id.* § 71.8(c) (amended by Chapter 775). Fees cannot exceed the sum of the cost of operating and maintaining the launching ramp and the prorated capital cost of that portion of the facility. *Id.* See generally *Larson v. City of Redondo Beach*, 27 Cal. App. 3d 332, 103 Cal. Rptr. 592 (1972) (renters of boat slips in a city-owned harbor denied a writ of mandate to compel city to investigate fairness of boat slip rentals).

12. See CAL. HARB. & NAV. CODE §§ 70-72.7 (West 1978 & Supp. 1990) (provisions governing small craft harbors and connecting waterways).

13. See CAL. FISH & GAME CODE §§ 7920 (West Supp. 1990) (license requirements for commercial passenger fishing vessels); 7880 (West 1984) (commercial fishing vessel registration).

14. CAL. HARB. & NAV. CODE § 86(b) (enacted by Chapter 775). The requirement applies to small craft harbors that provide facilities for the operation of commercial fishing vessels. *Id.* Commercial passenger fishing vessels and private recreational fishing vessels may be prohibited from using the facilities if alternative, equivalent facilities are available or if certain findings are made. *Id.*

15. *Id.* § 88 (enacted by Chapter 775). Chapter 775 does not provide immunity from liability for small craft harbors or boating facilities for the harbor's or facilities' negligent acts. *Id.*

Public Entities, Officers, and Employees; housing projects

Government Code § 65589.5 (amended).
SB 2011 (Greene); 1990 STAT. Ch. 1439

Existing law requires all cities and counties to develop a general land use plan that includes a housing element.¹ Chapter 1439 specifies that a local agency² may not withhold or condition approval of any low and moderate-income housing project³ so as to make the project infeasible⁴ for development as low and moderate-income housing, unless a specified finding has been made.⁵

LAMG

1. CAL. GOV'T CODE § 65300 (West Supp. 1990). *See id.* §§ 65302 (elements of a general plan); 65583 (contents of a housing element).

2. *See id.* § 65103 (West Supp. 1990) (functions of planning agencies).

3. *See id.* § 65589.5(h)(2) (amended by Chapter 1439) (definition of affordable to low- and moderate-income households).

4. *See id.* § 65589.5(h)(1) (amended by Chapter 1439) (definition of feasible).

5. *Id.* § 65589.5(d) (amended by Chapter 1439). Before a local agency may withhold or condition approval, the local agency must find one of the following: (1) The project is not needed for the jurisdiction to meet its allocation of low-income housing; (2) the proposed project would adversely affect the public health or safety and the adverse effect cannot be remedied without removing the project from low- and moderate-income availability; (3) the denial of the project or the conditions imposed are required by state or federal law; (4) the project would disproportionately increase the concentration of lower income households at the proposed site; (5) the proposed site is zoned for agriculture or resource preservation, and is adjoined on at least two sides by land being used for these purposes; or (6) the project is inconsistent with jurisdiction's general plan. *Id.* The requisite findings must be based on substantial evidence. *Id.* Chapter 1439 also specifically applies to charter cities. *Id.* § 65589.5(g) (amended by Chapter 1439).

Public Entities, Officers, and Employees; joint powers agreements--minority participation goals

Government Code § 6522 (new).

AB 2606 (Polanco); 1990 STAT. Ch. 1214

Support: Commission of the Status of Women

Opposition: Associated General Contractors of California;

Builders Exchange Legislative Network; North Coast

Builders Exchange; Southern California Contractors

Association; San Diego Associated General Contractors.

Under existing law, state public agencies¹ may enter into joint powers agreements (JPA) with other public agencies.² The JPA may establish a separate agency or entity for administration of the agreement.³ Chapter 1214 requires that specified state minority and women business enterprise contract participation goals⁴ are included in the JPA by the participating state agencies, so that all contracts executed by the agencies administering the JPA attempt to meet these goals.⁵

TDB

1. See CAL. GOV'T CODE § 6500 (West Supp. 1990) (definition of public agency).

2. See *id.* § 6502 (provision permitting execution of agreements by public agencies to exercise jointly powers held in common).

3. See *id.* § 6503.5 (West 1980) (provisions related to the establishment of a separate agency to administer the JPA).

4. See *id.* § 6522 (enacted by Chapter 1214) (the goals are those contained in sections 16850 and 10115 of the Public Contract Code and in Article 6 of Chapter 6 of Division 4 of the Military and Veterans Code). See also *id.* §§ 10115.1(h), 16851(e) (West Supp. 1990) (definition of goal).

5. *Id.* § 6522 (enacted by Chapter 1214).

Public Entities, Officers, and Employees; judicial disqualifications

Civil Procedure Code § 170.3 (amended).
SB 2316 (Lockyer); 1990 STAT. Ch. 910

Existing law requires a judge who disqualifies¹ himself or herself from a court case to inform the presiding judge of the court about the disqualification, and to cease participation in the proceedings unless there is a waiver of disqualification by the parties.² Chapter 910 prohibits any waiver of judicial disqualification where the judge is biased towards a party or if the judge has served as an attorney or as a key witness in the same matter.³

UOR

1. *See* CAL. CIV. PROC. CODE § 170.1(a) (West Supp. 1990) (definition of grounds for disqualification).

2. *Id.* § 170.3(a)(1) (amended by Chapter 910). A disqualified judge may ask the parties whether they wish to waive the disqualification; any waiver must be signed by both parties and entered in the record. *Id.*

3. *Id.* § 170.3(b)(2) (amended by Chapter 910).

Public Entities, Officers and Employees; law enforcement employees--AIDS reporting

Penal Code § 7554 (new and repealed).
SB 2033 (Mello); 1990 STAT. Ch. 1138

Existing law requires a law enforcement employee¹ who comes in contact with the bodily fluids² of inmates or others to submit a report to the chief medical officer.³ Under existing law, the chief medical officer decides whether human immunodeficiency virus (HIV) testing⁴ of the employee is required.⁵ Chapter 1138 further mandates that the chief medical officer⁶ report any reportable incident to the Department of Health Services.⁷ Chapter 1138

1. See CAL. PENAL CODE § 7502(c) (West Supp. 1990) (definition of law enforcement employee).

2. See *id.* § 7502(h) (definition of bodily fluids). See generally *Johnetta v. City and County of San Francisco*, 218 Cal. App. 3d 1255, 1271-72, 267 Cal. Rptr. 666, 675-76 (1990) (upholding against a constitutional challenge provisions of proposition 96, enacted in Nov. 1988, requiring HIV testing of persons who exposed public safety employees to their bodily fluids by a subcutaneous bite).

3. CAL. PENAL CODE § 7510(a). The conduct specified in California Penal Code section 7510(a) constitutes a "reportable incident". *Id.* § 7554(e) (enacted by Chapter 1138). See *id.* § 7510(c) (West Supp. 1990) (definition of chief medical officer). See generally Comment, *Symposium on AIDS and The Rights and Obligations of Health Care Workers: Workplace Exposure to AIDS*, 48 MD. L. REV. 212, 228 n.125 (1989) (identifying employees at risk of coming into contact with the bodily fluids of others as including law enforcement officers).

4. See *id.* § 7502(f) (definition of HIV test or testing).

5. *Id.* § 7511.

6. See *id.* § 7554(b) (enacted by Chapter 1138). Chapter 1138 also applies to correctional, custodial, or law enforcement agencies. *Id.*

7. *Id.* § 7554(b) (enacted by Chapter 1138). The report to the Department of Health Services must include the following: (1) The law enforcement employee's assignment; (2) the type of incident; (3) the type of injury; (4) medical treatment given to the employee involved; (5) criminal laws allegedly violated; and (6) the name of the employer. *Id.* Law enforcement agencies and nonprofit law enforcement research groups can access the reports upon written request. *Id.* § 7554(c) (enacted by Chapter 1138).

prohibits the report from including the identity of the injured employee or the source person.⁸

VCM

Public Entities, Officers, and Employees; local agency offsets

Government Code § 907 (new).

AB 3463 (LaFollette); 1990 STAT. Ch. 697

Support: County of Los Angeles, County Supervisors Association of California

Under existing law, the state controller¹ may offset amounts payable to a local public entity² with any amounts that the local public entity owes to the state.³ Chapter 697 permits a local public entity to offset any delinquent payments owed it by another public entity for services provided to that public entity.⁴

WTB

8. *Id.* § 7554(c) (enacted by Chapter 1138). It is a misdemeanor to release any information leading to the disclosure of the identity of the employee or source person. *Id.* See *id.* § 7554(e) (enacted by Chapter 1138) (definition of source person). See generally Comment, *supra* note 3, (analyzing the conflict between protecting employees from exposure to acquired immune deficiency syndrome (AIDS) in the workplace and preserving the privacy rights of individuals with AIDS). The stated legislative purpose of Chapter 1138 is to determine the workplace exposure of law enforcement employees to HIV infection. CAL. PENAL CODE § 7554(a) (enacted by Chapter 1138).

1. See CAL. GOV'T CODE §§ 12410-12430 (West 1980 & West Supp. 1990) (duties of the state controller).

2. See *id.* § 900.4 (West 1980) (definition of local public entity).

3. *Id.* § 12419.5 (West Supp. 1990). See *Review of Selected 1980 California Legislation*, 12 PAC. L.J. 235, 307 (1981) (definition of amounts payable includes tax refunds).

4. CAL. GOV'T CODE § 907 (enacted by Chapter 697). The public entity seeking the offset must give the debtor 30 days notice, and may only accomplish the offset if no written dispute is received from the debtor. *Id.* The debtor must file a written dispute if the offset would result in the debtor failing to meet encumbered bonded indebtedness. *Id.* Any tax revenue is also subject to an offset. *Id.* See *Corbett v. Wilber*, 123 Cal. 154, 156, 55 P. 764, 765 (1898) (a municipal corporation has the same right as any other creditor to claim a setoff).

Public Entities, Officers and Employees; mobile home park gas distribution systems

Public Utilities Code §§ 4351, 4352, 4353, 4354, 4355 (repealed and new); §§ 4356, 4357, 4358, 4359, 4360 (new).
AB 3327 (Lewis); 1990 STAT. Ch. 1630
SB 2647 (Rosenthal); 1990 STAT. Ch. 1601¹
Support: Western Mobilehome Association

Existing law provides that every operator² of a gas³ distribution system⁴ in a mobilehome park⁵ must file a report regarding the distribution system with the Department of Housing and Community Development (Department).⁶ The Department must then forward a copy of the report to the Public Utilities Commission (PUC), which the PUC examines for suspected violations.⁷ Under Chapter 1601, the PUC must implement a gas safety program to ensure that mobilehome operators comply with federal pipeline standards.⁸ Chapters 1630 and 1601 require operators to annually prepare and submit directly to the PUC a report on the gas distribution system.⁹ Upon receipt of the report,

1. Chapter 1630 provides that, although certain code sections are affected by both Chapter 1601 and Chapter 1630, both Chapters are operative. 1990 CAL. STAT. Ch. 1630, Sec. 3, at ____.

2. See CAL. PUB. UTIL. CODE § 4351(c) (repealed and enacted by Chapters 1630 and 1601) (definition of operator).

3. See *id.* § 4351(a) (repealed and enacted by Chapters 1630 and 1601) (definition of distribution system).

4. See *id.* § 4351(b) (repealed and enacted by Chapters 1630 and 1601) (definition of distribution system).

5. See CAL. CIV. CODE § 798.4 (West 1984) (definition of mobilehome park).

6. CAL. PUB. UTIL. CODE § 4354(a) (repealed and enacted by Chapters 1630 and 1601).

7. *Id.*

8. *Id.* § 4352 (repealed and enacted by Chapter 1601). The PUC may adopt standards that are more stringent than those under federal law. *Id.* See *id.* §§ 4353(a), (b) (repealed and enacted by Chapter 1601) (requiring the PUC to conduct an initial inspection of each distribution system, and follow-up inspections every five years); 4353(c)-(d) (repealed and enacted by Chapter 1601) (permitting more frequent inspections if the system does not comply with PUC standards). See also *id.* § 4351 (repealed and enacted by Chapter 1601) (citing United States Code title 49, section 1671 for description of federal pipeline standards).

9. *Id.* See *id.* § 4357(a) (enacted by Chapters 1630 and 1601) (providing that an operator's failure to file the report or comply with a Department directive may result in a fine of \$1,000 per day until the report is filed, but the fine may not exceed \$200,000). See also *id.* § 4360 (enacted by

the PUC must examine the report for violations, and the PUC is authorized to inspect the gas distribution system verification that no violations have occurred.¹⁰ Chapter 1601 requires the PUC to furnish the operator with a copy of the report within thirty days of the inspection.¹¹ Further, all safety hazards must be reported to the United States Department of Transportation, that state Department of Transportation, the state Department of Housing and Community Development, the servicing utility, and the operator, who must notify all affected tenants.¹²

JLR
FPC

Public Entities, Officers, and Employees; peace officers--carrying firearms

Penal Code § 830.5 (amended).

AB 3905 (Quackenbush); 1990 STAT. Chapter 1194

Existing law defines specified employees of the Department of Corrections (Department) as peace officers.¹ These peace officers are permitted to carry firearms while off-duty,² and must meet related training requirements.³ Chapter 1194 provides that a peace officer's failure to meet these training requirements constitutes

Chapter 1630) (setting forth that operators of propane master-meter systems supplying ten or more customers from a single source must also comply with federal law provisions).

10. *Id.* § 4354(d) (enacted by Chapters 1630 and 1601).

11. *Id.* § 4355 (repealed and enacted by Chapter 1601). If the report indicates violations have occurred, the operator must file a written response with the PUC within 30 days, acknowledging receipt of the report and specifying corrective action. *Id.*

12. *Id.* § 4356(a) (enacted by Chapter 1601). If the operator fails to correct the hazard, the PUC may order the operator's gas service terminated. *Id.* § 4356(b) (enacted by Chapter 1601).

1. CAL. PENAL CODE § 830.5(a)-(b) (amended by Chapter 1194).

2. *Id.* § 830.5(c) (amended by Chapter 1194).

3. *Id.* § 830.5(d) (amended by Chapter 1194). *See id.* § 832 (West Supp. 1990) (provisions specifying training requirements relating to firearms).

good cause to suspend or revoke the officer's right to carry firearms while off-duty.⁴ Chapter 1194 also requires the Department to allow reasonable access to its firing ranges for the purpose of meeting these training requirements,⁵ but specifies that any time spent by the peace officer for this purpose must be done on the officer's own time during the officer's off-duty hours.⁶

TDB

Public Entities, Officers, and Employees; peace officers--employment disclosures

Labor Code § 432.7 (amended); Penal Code § 13203 (new); § 13300 (amended).

AB 4311 (Jones); 1990 STAT. Ch. 769

Sponsor: Department of Youth Authority

Support: California Highway Patrol

Existing law prohibits any employer¹ from asking any applicant for employment to disclose any non-conviction arrest or detention information.² However, existing law exempts the Department of Justice³ and other criminal justice agencies⁴ from this provision

4. *Id.* § 830.5(d) (amended by Chapter 1194). These provisions also apply to designees of the Director of Corrections. *Id.* § 830.5(e) (amended by Chapter 1194).

5. The Department must allow reasonable access to its ranges only for officers or designees of the Department of Corrections or the Department of the Youth Authority. *Id.* § 830.5(e) (amended by Chapter 1194).

6. *Id.* § 830.5(e) (amended by Chapter 1194).

1. See CAL. LAB. CODE § 432.7(a) (amended by Chapter 769) (definition of employer includes public agencies, private individuals, and corporations).

2. *Id.* Employers are also barred from seeking information concerning referral to or participation in any pretrial or post-trial diversion program. *Id.* Employers may not utilize this information for the purposes of hiring, promotion, termination, or any apprenticeship training program. *Id.* See generally Central Valley Chapter of 7th Step Found. v. Younger, 214 Cal. App. 3d 145, 156, 214 Cal. App. 3d 753F, modified, 262 Cal. Rptr. 496, 502 (1989) (analysis of California Labor Code section 432.7).

3. See CAL. GOV'T CODE §§ 15000, 15001 (West 1980) (creation and composition of the Department of Justice).

4. See CAL. PENAL CODE § 13101 (West 1982) (definition of criminal justice agencies).

when those agencies are evaluating persons who seek employment as peace officers.⁵ Chapter 769 enlarges the criminal justice agency exemption to encompass persons already employed as peace officers.⁶

Chapter 769 prohibits a criminal justice agency from taking any action that is based only on the information contained in an arrest report, other than placing a peace officer on paid administrative leave.⁷ Chapter 769 also authorizes local criminal justice agencies to release information concerning a non-conviction arrest or detention of a peace officer to any government agency employer of that peace officer.⁸

RWL

5. CAL. LAB. CODE § 432.7(e) (amended by Chapter 769). *See* CAL. PENAL CODE §§ 830-830.6 (West 1985 & Supp. 1990) (definitions of peace officers).

6. CAL. LAB. CODE § 432.7(e) (amended by Chapter 769). *But see* *Pitman v. City of Oakland*, 197 Cal. App. 3d 1037, 1043, 243 Cal. Rptr. 306, 309 (1988). California Labor Code section 432.7(d) excludes only those persons seeking employment from the information prohibition and does not exclude current employees from the information prohibition. *Id.*

7. CAL. LAB. CODE § 432.7(b) (amended by Chapter 769). The information contained in the arrest report may be used as a starting point for an independent internal investigation of the peace officer. *Id.* *See* CAL. PENAL CODE §§ 11105 (West Supp. 1990) (providing for state summary criminal history information); 13300(a)(1) (amended by Chapter 769) (definition of local summary criminal history information). *See also* CAL. GOV'T CODE §§ 3303 (West 1980) (governing investigation and interrogation of a peace officer); 19574.5 (West Supp. 1990) (providing for paid administrative leave).

8. CAL. PENAL CODE §§ 13203 (enacted by Chapter 769); 13300(k) (amended by Chapter 769). Local criminal justice agencies may also release information concerning referral to and participation in any post-arrest diversion program. *Id.* *Cf.* *Central Valley Chapter of 7th Step Found. v. Younger*, 214 Cal. App. 3d 145, 165, 214 Cal. App. 3d 753F, *modified*, 262 Cal. Rptr. 496, 508 (1989) (determining that dissemination of non-conviction information to nonexempt employers and licensing agencies violates California constitutional privacy guarantees).

Public Entities, Officers, and Employees; public address systems

Health and Safety Code § 13108.9 (new).

AB 2994 (Eaves); 1990 STAT. Ch. 1426

Support: Seismic Safety Commission, California State Firemen's Association

Existing law authorizes the State Fire Marshal¹ to prepare and adopt regulations regarding fire and panic safety for specified buildings and structures.² Chapter 1426 instructs the State Fire Marshal to establish regulations that require a public address system³ in buildings and structures intended for public assemblies of 10,000 or more persons.⁴

RS

1. See CAL. HEALTH & SAFETY CODE §§ 13100-13104 (West 1984) (appointment, functions, and duties of the State Fire Marshal). The office of the State Fire Marshal develops means of protecting life and property against fire and panic, and exercises police officer functions. *Id.* §§ 13100.1, 13103.

2. *Id.* §§ 13108-13146.5 (West 1984 & Supp. 1990). Regulations include minimum fire prevention and panic safety requirements, including automatic fire alarms and sprinkler systems for hospitals, jails, homes for children and aged, schools, theaters, restaurants, structures used for amusement and entertainment, and tents and awnings. *Id.*

3. See *id.* § 13108.9 (enacted by Chapter 1426) (the public address system must have an emergency backup power system).

4. *Id.* The regulations adopted by the State Fire Marshal apply to buildings and structures constructed on or after July 1, 1991. *Id.* Existing buildings and structures that subsequently install a public address system or that have a public address system, on or after January 1, 1991, must install an emergency backup power system for the public address system. *Id.*

Public Entities, Officers, and Employees; Public Employees' Retirement System--retirement benefits

Government Code § 20564.1 (new); §§ 20565, 20759 (amended).

SB 2271 (Maddy); 1990 STAT. Ch. 821

Sponsor: Westlands Water District

Under existing law, any public agency¹ may contract with the Public Employees' Retirement System (PERS)² to enable the public agency's employees³ to participate in PERS.⁴ Existing law requires PERS to reduce benefits to former employees of any public agency that terminates a contract with PERS, if insufficient agency and employee contributions exist to fund the former employees' earned benefits.⁵ Chapter 821 prohibits any reduction in benefits provided to former employees, and restores the former employees' benefits to the level specified by the discontinued

1. See CAL. GOV'T CODE §§ 20009-20009.12 (West 1980 & Supp. 1990) (definitions of public agency).

2. See *id.* §§ 20001, 20002, 20004 (West 1980) (creation of PERS).

3. See *id.* § 20012 (West Supp. 1990) (definition of employee for purposes of PERS).

4. *Id.* § 20450. An employee may remain a member of PERS even if the public agency terminates its contract with PERS. *Id.* § 20565 (amended by Chapter 821). See *Valdes v. Cory*, 139 Cal. App. 3d 773, 787, 189 Cal. Rptr. 212, 223 (1983) (state and public employers are contractually bound to contribute appropriate amounts to PERS fund).

5. CAL. GOV'T CODE § 20564 (West Supp. 1990). Upon an agency's termination of a contract with PERS, if the accumulated contributions of the agency and the employees are less than the amount specified in California Government Code section 20563, then the agency is required to contribute the difference. *Id.* If the agency fails to contribute the difference, then PERS reduces the benefits paid to the employee by a percentage of the difference. *Id.* Cf. ARIZ. REV. STAT. ANN. § 38-753 (1985) (benefits may be increased or decreased according to available funds in the system). *But cf.* FLA. STAT. ANN. § 112.362 (West Supp. 1990) (recomputation of benefits will not result in reduced benefits).

contract between PERS and the public agency.⁶ Chapter 821 applies only to contracts terminated no later than January 1, 1991.⁷

RS

Public Entities, Officers, and Employees; public land trusts--liability

Government Code § 831.5 (amended).

AB 3570 (Harris); 1990 STAT. Ch. 934

Support: State Coastal Conservancy, Save Las Pulgas, Inc.

Under existing law, public entities¹ are immune from liability for damages to off-site property² caused by land failure³ of unimproved public property, if a natural condition of the unimproved public property caused the off-site property land

6. CAL. GOV'T CODE § 20564.1 (enacted by Chapter 821). The assets and liabilities of the public agencies that terminated contracts with PERS on or before January 1, 1991, are pooled into a single account for the payment of benefits to current and former employees of those public agencies, in order to protect the employees from a reduction in benefits. *Id.* §§ 20564.1 (enacted by Chapter 821), 20565, 20759 (amended by Chapter 821). *See Valdes*, 139 Cal. App. 3d at 784, 189 Cal. Rptr. at 221 (prior to retirement, employee does not obtain an absolute right to fixed or specific benefits, but only to a reasonable pension).

7. CAL. GOV'T CODE § 20564.1 (enacted by Chapter 821).

1. *See* CAL. GOV'T CODE § 811.2 (West 1980) (definition of public entity).

2. *See id.* § 831.25(a) (West Supp. 1990) (off-site property is a property that is off the public entity's property).

3. *See id.* § 831.25(c) (definition of land failure).

failure.⁴ Chapter 934 specifically extends this immunity to public land trusts.⁵

SAJ

Public Entities, Officers, and Employees; state contracts--consulting services

Public Contract Code § 10365.5 (new).

AB 3285 (Clute); 1990 STAT. Ch. 344

Opposition: California Council of Civil Engineers and Land Surveyors, Price Waterhouse

Existing law regulates the bids¹ and bidders for state consulting services contracts.² Chapter 344 prohibits any person, firm, or subsidiary that has been awarded a state consulting services contract from submitting a bid for the provision of services,

4. *Id.* § 831.25(a). The immunity does not apply if the public entity failed to give adequate warning despite having actual knowledge of the probable damage to the off-site property. *Id.* § 831.25(d). *See id.* §§ 831.2 (West 1980) (public entities not liable for injury caused by a natural condition of unimproved property); 831.4 (public entities are not liable for injuries sustained by a condition of an unpaved road leading to fishing or similar recreational activities, or for injuries sustained by a condition of a paved road if an adequate warning was provided); 831.7 (West Supp. 1990) (public entities not liable to persons participating in hazardous recreational activities). *See generally* *McCauley v. City of San Diego*, 190 Cal. App. 3d 981, 991, 235 Cal. Rptr. 732, 738 (1987) (municipality has no duty to warn of the dangerous natural condition of the cliffs on a state beach).

5. *Id.* § 831.5(b) (amended by Chapter 934).

1. *See* CAL. PUB. CONT. CODE § 5100(b) (West 1985) (definition of bid).

2. *Id.* § 10356. *See id.* §§ 10372-10382 (West 1985 & Supp. 1990) (provisions for notice, preparation, approval, and award of state consulting services contract bids).

procurement of goods or supplies, or any related action required in the end product of the awarded state consulting services contract.³

JYE

Public Entities, Officers, and Employees; volunteer health insurance counselors

Welfare and Institutions Code § 9758 (new).
AB 4219 (Lempert); 1990 STAT. Ch. 869

Existing law permits the Department of Aging¹ to use volunteer health insurance counselors² to provide health insurance counseling for Medicare beneficiaries.³ Under Chapter 869, volunteer health insurance counselors must be registered with the Department of Aging⁴ and may not be held liable for negligence in providing health insurance counseling.⁵ Chapter 869 further specifies that

3. *Id.* § 10365.5(a) (enacted by Chapter 344). Chapter 344 does not prohibit a subcontractor under an awarded consulting services contract from submitting a bid for the end product of the awarded consulting services contract if the subcontract comprises less than ten percent of the total monetary value of the state consulting services contract. *Id.* § 10365.5(b) (enacted by Chapter 344). Private architects and engineering firms that enter into state consulting services contracts are not prohibited from submitting bids or from being awarded a state contract. *Id.* § 10365.5(c) (enacted by Chapter 344). *See* CAL. GOV'T CODE §§ 4525-4529.5 (West Supp. 1990) (provisions regarding contracts with private architects and engineering firms).

1. *See* CAL. WELF. & INST. CODE §§ 9300, 9306, 9306.1 (West 1984) (powers and duties of Department of Aging and Long-Term Care).

2. *See id.* § 9758(d) (enacted by Chapter 869) (subject areas required for counselor training prior to registration).

3. *Id.* §§ 9750-9755 (West Supp. 1990).

4. *Id.* § 9758(a) (enacted by Chapter 869).

5. *Id.* § 9758(b)(1) (enacted by Chapter 869). Chapter 869 does not provide immunity for grossly negligent acts or omissions or for intentional misconduct. *Id.* Chapter 869 requires that recipients of counseling must receive a written disclosure statement that the counseling services are provided by volunteers who are subject to limited liability. *Id.* § 9758(c) (enacted by Chapter 869).

volunteer counselors are not liable to any insurance agent or broker for defamation without proof of actual malice.⁶

LAMG

6. *Id.* § 9758(b)(2) (enacted by Chapter 869). Chapter 869 also grants volunteer counselors immunity for trade libel, slander, and other actions based on statements made during counseling. *Id.* See generally *New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964) (defining actual malice as knowledge of falsity or reckless disregard of truth).